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No. 84-810 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1984

MAX SCHNEIER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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3 pp

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The court of appeals in this civil income tax case entered judgment against petitioner on June 15, 1984 (Pet. App. 1a). A petition for rehearing was denied on July 31, 1984 (Pet. App. 11a). Petitioner did not obtain an extension of time within which to file a petition for a writ of certiorari. The time for filing a petition accordingly expired on October 29, 1984, a Monday. 28 U.S.C. 2101(c). The petition was not filed until November 1, 1984. The petition, which was filed pro se, was not accompanied by a notarized statement by a member of the Bar of this Court stating that the mailing took place on a particular date within the permitted time. See this Court's Rule 28.2. The time limit

provided by Section 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264 (1942). It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

DECEMBER 1984

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